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FALSE AND VEXATIOUS LITIGATION IN ANCIENT HINDU LAW

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The idea of punishing and discouraging false and vexatious claims or defences by awarding compensatory costs to the successful party is not a new or modern one. Even in our ancient legal system we find such a practice in a more well defined and detailed fashion.

A false or vexatious claim पक्षाभास has been described thus.

"अप्रसिद्धं, निराबाधं, निरर्थं, निष्प्रयोजनम् ।
असाध्यं वा विरुद्धं वा, पक्षाभासं विवर्जयेत् ॥"

(1) अप्रसिद्धं = Unnatural, unusual or unknown, *e.g.*, Defendant has taken away the horns of the plaintiff's hare.

(2) निराबाधं = Harmless, trivial, *e.g.*, defendant is doing his business in his house with the aid of the light in plaintiff's house.

(3) निरर्थं = Meaningless, unintelligible.

(4) निष्प्रयोजनं = Useless, *e.g.*, the defendant has been singing near plaintiff's house.

(5) असाध्यं = Improbable, impracticable, *e.g.*, the defendant has derided or ridiculed the plaintiff with a frown (भ्रूभंगेन)

(6) विरुद्धं = Unnatural, *e.g.*, the plaintiff has been scolded by the defendant (who is dumb).

Kinds of Defences to an action

Katyayana has enumerated four kinds of defences:—

"सत्यं मिथ्योत्तरं चैव, प्रत्यवस्कन्दनं तथा ।
पूर्वन्यायविधिश्चैवमुत्तरं स्याच्चतुर्विधम् ॥"

or

(1) संप्रतिपत्तिः (2) मिथ्या or निह्नव or अपह्नव (3) प्रत्य-वस्कन्दनं (4) प्राङ्न्यायः.

(1) Cognovit or defendant admitting the claim. (2) Denial of claim. (3) Plea of discharge. (4) Plea of *res judicata.*

It is unnecessary to discuss the cases where the defendant admits the suit claim. The rest alone need to be dealt with.

(2) निह्नव Where the defendant denies the debt or the suit claim. If the plaintiff sucessfully proves his case, the defendant besides paying the suit amount will have to pay an equal amount to the King as a sort of fine for setting up a false defence (मिथ्योत्तर or निह्नव)

"निह्नवे भावितो दद्यात्, धनं राज्ञे च तत्समम् ।
मिथ्याभियोगी द्विगुणं, अभियोगाद्धनं हरेत् ॥"

If the plaintiff fails to prove his case where the defendant denies the debt or claim, then the plaintiff will be mulcted with a payment of twice the suit amount to the king, as the plaintiff is guilty of advancing a false claim (पक्षाभास)

(3) & (4) प्रत्यवस्कन्दनं, and प्राङ्न्याय Plea of discharge and plea of *res judicata.* The same rule applies to these two cases also. But when the defendant fails to establish that the suit is barred by *res judicata* or fails to prove that he had already discharged the debt, he has to pay the suit amount to the plaintiff and twice of it to the King.

"अथ प्रत्यर्थी प्राङ्न्यायं, कारणं वा भावयितुं न शक्नोति तदा स एव मिथ्याभियोगीति राज्ञे द्विगुणं धनं दद्यात् ॥"

Vignaneswara.

Even when the plaintiff is not able to state his case properly he will be considered to be a false claimant and he has to pay twice the suit amount to the king as fine.

"अथ अभियोक्ता अभियोगं वक्तुं न शक्नोति तदा मिथ्याभियोगीति प्रतिपदोक्तं धनं दण्डं द्विगुणं दद्यादिति विधीयते ।"

Vignaneswara.

INCONSISTENT PLEAS or हीनवादः Parties are not allowed to take up inconsistent positions or raise inconsistent pleas during the course

of the trial; and if they do so they will be fined. Thus we see that the principle in the maxims '*Ordine placitandi servato servatur et jus*' *i.e.*, the order of the pleading being preserved the law is preserved; and '*Nemo potest mutare consilium suum in alterius injurium*,' *i.e.* no one can change his mind to the prejudice of another's right' was observed even in those days also. Narada describes हीनवाद thus.

"पूर्वपादं परित्यज्य योऽन्यमालम्बते पुनः ।
पदसंक्रमणाज्ज्ञेयो हीनवादी स वै नरः ॥"

For example, if the plaintiff at the time of the complaint stage (आवेदनसमये) states, that the defendant borrowed the suit amount from him, and subsequently changes his case at the time of giving evidence (भाषासमये) that defendant has stolen the amount, the plaintiff is liable to be punished as हीनवादिन्; but only with a fine and not with an amount equal to the suit claim.

हीनवादी दण्ड्यो भवति न प्रकृतार्थाद्धीयते ।

हीनवाद is also described by another sage thus:

"अन्यवादी, क्रियाद्वेषी, नोपस्थाता निरुत्तरः ।
आहूत प्रपलायी च हीनः पञ्चविधः स्मृतः ॥"

(1) One who changes his case during trial or a prevaricating witness. (2) A hostile witness. (3) A party who does not stand in front of the Judge. (4) One who refuses to give evidence. (5) One who absconds when summoned.

Vague and indefinite replies or defences etc.

Vague and indefinite replies or defences were discouraged and punished. *Cf.* '*causa vaga et incerta non est causa rationabilis*' *i.e.*, a vague and uncertain cause is not a reasonable cause. The following are some of the typical instances of such vague and indefinite defences.

(1) संदिग्ध *e.g.*, Patent ambiguity—when the suit is laid for the recovery of 100 gold coins सुवर्णाः, defendant's answer is, he migh have borrowed 100 सुवर्णाः or 100 माषाः—.

(2) प्रकृतादन्यत् *e.g.*, when the suit is for 100 सुवर्णाः, defendant says that he once borrowed 100 पणाः.

(3) अत्यल्पं (4) अतिभूरि

(5) व्यस्तपदं Irrelevant reply *e.g.*, when the plaintiff claims 100 सुवर्णाः the defendant pleads that he was beaten by the plaintiff.

(6) निगूढार्थं—When the plaintiff claims 100 सुवर्णाः defendant replies that he does not owe anything to this plaintiff.

(7) आकुलं Absurd defence—To say that he has borrowed the amount from the plaintiff but he does not owe him anything (without pleading discharge).

(8) व्याख्यागम्यं Ambiguous or unintelligible replies.

(9) असारं Meaningless and silly replies *e.g.*, when the suit is for principal and interest, defendant pleads that he has already paid the interest but the principal amount was not borrowed by him.

(10) संकरोत्तर Confusion of pleas or replies *e.g.*, admitting the suit claim in one place, denying it in another and pleading discharge in a third—

Punishment for giving false evidence

Witnesses were also punished for giving false evidence. Yagnavalkya says.

"पृथक् पृथक् दण्डनीयाः कूटकृत्साक्षिणस्तथा ।
विवादाद्द्विगुणं दण्डं विवास्यो ब्राह्मणः स्मृतः ॥"

Each one of the false witnesses should be fined with double the suit amount: and in the case of a Brahmin he should be exiled.

"यः साक्ष्यं श्रावितोऽन्येभ्यो निह्नुते तत्तमोवृतः ।
स दाप्योऽष्टगुणं दण्डं, ब्राह्मणं तु विवासयेत् ॥" *Ibid.*

When a witness, having agreed to give evidence and having received instructions also along with the other witnesses, denies everything at the time of giving evidence, he is liable to be fined with eight times the suit amount; and if he is a Brahmin he should be banished.

Punishment for Kings and Judges:

Not only false and vexatious litigants and witnesses were punished but also Kings and Judges, who did not properly administer justice out of fear, favour or malice. Manu says:

"अदण्ड्यान् दण्डयन् राजा, दण्ड्यांश्चैवाप्यदण्डयन् ।
अयशो महदाप्नोति नरकं चैव गच्छति ॥"

Punishing the innocent and acquitting the guilty, the King suffers from infamy and goes to hell. He should administer justice without malice.

"धर्मशास्त्रानुसारेण क्रोधलोभविवर्जितः ।
रागाल्लोभाद्भयाद्वापि स्मृत्यपेतादिकारिणः ।

सभ्याः पृथक् पृथक् दण्ड्याः, विवादात् द्विगुणं दमम् ॥"

Out of affection (sympathy or love) or out of covetousness (avarice) or out of fear if Judges decide cases in derogation of law, they are each liable to be fined with twice the suit amount—

There used to be four grades of courts.

(1) नृपाधिकृताः (2) पूगः (3) श्रेणी (4) कुल.

नृपाधिकृत acted as the highest appellate tribunal, but further appeals lay to it from its own decisions with a change of advisors or Judges. If the appeal failed the defeated appellant was punished and if it succeeded the erstwhile Judges who wrongly decided the appeal previously were punished.

SUMMARY OF ENGLISH CASES.

MYERS *v.* ELMAN, (1940) A.C. 282 (H.L.).

Solicitor—Negligence in leaving conduct of case to managing clerk who caused to be filed false and inadequate affidavit of documents—Jurisdiction of Court to order solicitor to pay costs personally.

A solicitor through his managing clerk (to whom he left the conduct of a case) " as a result of a deliberate policy adopted in his office, in the conduct of the defence and in relation to discovery increased the plaintiff's difficulties, added to the expense and obstructed the interests of justice" by filing wholly inadequate and false affidavits and documents,

Held [reversing the majority view of the Court of Appeal in (1938) 3 All.E.R. 498], the Court has jurisdiction to order the solicitor to pay costs. The primary object of the Court is not to punish the solicitor, but to protect the client who has suffered and to indemnify the party who has been injured. The solicitor cannot escape his liability by dissociating himself from the acts and defaults of his managing clerk whose acts are to be treated as the acts of the principal. It is immaterial that no professional misconduct is attributed to the solicitor personally.

SCOTT *v.* FRANK F. SCOTT (LONDON), LTD., (1940) 1 Ch. 217.

Companies—Articles of association not in accordance with intention of signatories—Rectification—If can be made by Court.

The Court has no jurisdiction to rectify articles of association, even although it should be proved that the articles of association do not accord with what is proved to have been the concurrent intention of the signatories at the moment of their signature.

BISMAG, LTD. *v.* AMBLINS (CHEMISTS), LTD., (1940) 1 Ch. 225.

Trade Marks Act (1938) (*c.* 22), *S.* 4—*Use by defendant of plaintiff's trade mark in relation to plaintiffs' own goods—If infringement.*

Plaintiffs had registered "bisurated" as trade mark in respect of (1) their patent medicine and (2) chemical substance for use in pharmacy. Defendants carrying on business of manufacture and sale of medicinal preparations issued pamphlets showing the exorbitant cost of patent medicines and their analysis and offering the same prescription at much less cost.

Held, this did not constitute an infringement as the defendants do not by any means seek to describe goods of their own manufacture by the plaintiffs' mark. On the contrary they emphasise the distinction between their own and the plaintiffs' goods.

[See on Appeal in (1940) 2. All. E.R. 608.]

In re ZAKON : *Ex parte* THE TRUSTEE *v.* BUSHELL, (1940) 1 Ch. 253.

Bankruptcy—Trustee under abortive deed of assignment for benefit of creditors—If entitled to retain from profits of business expenses incurred against trustee in subsequent bankruptcy.

On November 12, 1938, the bankrupt executed an assignment of his properties to the respondent as trustee for the benefit of his creditors. On November, 17, 1938, the respondent procured the deed to be registered and incurred expenses. On November 18, 1938, a meeting of creditors was held and the majority of creditors were not in favour of the deed. On November 24, 1938, a creditor presented a bankruptcy petition and a receiving order was made on January 5, 1939 and on February 1 the bankrupt was adjudicated. On January 25 the applicant was appointed trustee of the debtor's property. When the respondent was called upon by the trustee in bankruptcy to hand over the collections he had made, the respondent sought to retain from the profits of the business, the amount which he was out of pocket in carrying on the business.

Held, the respondent expended the money entirely at his risk and the trustee in bankruptcy was entitled to the whole amount.

In re HODGE : HODGE *v.* GRIFFITHS, (1940) 1 Ch. 260.

Will—Gift burdened with a condition—Devisee paying for some time the surplus amounts directed to be paid under the will—Personal liability—If imposed—Gift if can be disclaimed after acts indicating acceptance.

A wife appointed her husband and mother executors and trustees of her will and devised a freehold thus : "I give and bequeath the freehold to my husband *A.H.* in consideration of his paying to my sister *C.M.G.* the sum of 2*l.* per week during her life and I further direct that in the event of my said husband disposing of the whole property the annuity of 2*l.* per week shall cease and in lieu thereof

he shall invest the sum of 2,000*l*. in authorised trustees securities in the name of *C.M.G.*, *A.H.* and the other executor........and as to the remainder of my estate I give to *A.H.* my husband absolutely."

The surplus income was insufficient to provide the 2*l*. a week to *C.M.G.* and *A.H.* paid for 4 years the 2*l*. making up the deficiency from his own pocket. *A.H.* took out a summons to determine whether any personal liability was imposed on him to pay *C.M.G.* irrespective of the testatrix's interest in the property.

Held, in the circumstances *A.H.* had accepted the gift by his conduct and the obligation to make the weekly payments or provide 2,000*l*. has become binding upon him and it is not open to him to disclaim the gift.

English and Scottish Co-operative Society, Ltd. *v.* Odhams Press, Ltd., (1940) 1 K.B. 440 (C.A.).

Tort—Libel and slander—Headline in newspaper literally true—When capable of an innuendo*—Manner and occasion of the publication—Effect.*

Plaintiff, a co-operative society, though there was no question whatever as to any moral guilt at all or any fraud, was charged as a test case with making a "false return" in that a particular entry was wrong. Plaintiff's auditors and legal advisers had given the opinion that a certain accession to the wealth of the society can be treated as 'capital' and the public auditor contended that it should be treated as profits. The plaintiffs were fined on the charge. The defendants, a newspaper, published a report with a prominent headline in bold types "*False Profit Return—Charge Against Society*," followed by an account of the proceedings which were in their natural meaning an accurate statement of facts with some portions printed more prominently than others. The plaintiffs pleaded an *innuendo* that the words were meant and understood to mean that the plaintiffs had deliberately falsified their accounts and that they had published a return of annual profits which they knew to be wrong and that they had done so with a view to deceiving their constituents and the general public as to their true position and that they were insolvent or unstable and a society which investors should avoid and that they carried on their business by dishonest methods. Defendants objected to the *innuendo* on the ground that the words in their natural and ordinary meaning were incapable of the *innuendo*.

Held, having regard to the ambiguous if not the primary meaning of the word "false"—namely that it connotes something of a fraudulent nature and the mode and occasion of the publication the words are capable of the *innuendo* and the plaintiffs are entitled to more than nominal damages. A new Trial on the issue of Damages was ordered.

BRITON FERRY STEEL CO., LTD. *v.* BARRY, (1940) 1 K.B. 463 (C.A.).

Income-tax—Finance Act, 1926, *S.* 32 (2)—*Merger of manufacturing parent and subsidiary companies—Liability of parent company to tax as successor to business of subsidiary company.*

On the liquidation of six wholly owned subsidiary companies the business was transferred to the parent company and the parent company instead of manufacturing and supplying steel bars to the subsidiary companies to be made into tin plates began to make the tin plates themselves.

Held, on the facts the parent company had succeeded to the business of the six subsidiary companies and were liable to tax as such.

ROUSE *v.* GRAVELWORKS, LTD., (1940) 1 K.B. 489 (C.A.).

Easements—Natural right to support of land—Water collecting in quarrying pits blown over neighbour's land by wind—Liability.

The defendants by digging gravel on their property allowed water to collect in the extensive pit and the water was blown over the neighbouring (plaintiff's) land washing away the boundary and causing damage by erosion.

Held, the defendant had used the land naturally and is not liable for the destruction of the natural lateral support of the plaintiff's land by operation of natural forces. The plaintiff had no cause of action.

ALDHAM *v.* UNITED DAIRIES, (1940) 1 K.B. 507 (C.A.).

Tort—Negligence—Pony attached to carriage left unattended—Injury to plaintiff attacked by such animal—Owner's liability for damages.

The jury found that the defendant was negligent in leaving a pony attached to a carriage unattended and plaintiff was injured by the pony.

Held, a driver who knowingly leaves a restive pony unattended is justly held guilty of negligence. The facts in the case fully justified the inference that the plaintiff's injuries were directly caused by the negligence of the defendant's servant in leaving an impatient horse unattended for too long a time.

Cox v. *Burbidge,* (1863) 13 C.B.N.S. 430 distinguished and (1939) 3 All.E.R. 478 reversed.

WAY *v.* PENRIKYBER NAVIGATION COLLIERY CO., LTD., (1940) 1 K.B. 517 (C.A.).

Workman's Compensation—Accident arising in the course of Employment—Payment of compensation after notice of accident—How far evidence of accident.

Slesser, MacKinnon and Goddard, L. JJ. (*Slesser, L.J., dissenting*).—In the absence of any evidence from employers, the fact of their paying compensation under the Act, is some evidence that they admitted that there was an accident.

Per *Slesser, L.J.*—It can amount to no more than an admission that on that date having received notice of accident, the employers paid to the workman a certain sum of moneys possibly equivalent to the sum which he would have been entitled to receive if he had a right to compensation.

CHAPELTON *v.* BARRY URBAN DISTRICT COUNCIL, (1940) 1 K.B. 532 (C.A.).

Contract—Hire of deck chairs—Ticket or receipt for the hire with conditions on it—If contract subject to the conditions.

A person who hired a deck chair on the beach suffered injury by the chair giving way. He sued the defendants for damages for negligence in providing a chair which was unfit for use. The defendants relied on conditions excluding liability printed on the tickets.

Held, the cases dealing with railway tickets, cloak room tickets, or documents issued by bailees when they take charge of goods have no analogy to this case. The plaintiff paid 2*d.* in order to have the right to sit on a chair on the beach. He was asked to take a receipt in the form of a ticket. The plaintiff cannot be deemed to have entered into a contract in the terms of the words printed on the back of the receipt. Defendants were liable for damages.

LIFFEN *v.* WATSON, (1940) 1 K.B. 556 (C.A.).

Tort—Damages—Personal injury disabling plaintiff—Loss of boarding and lodging from employer during disablement—If to be included in damages—Provision of board and lodging by father—Effect.

Plaintiff who was injured while a passenger in a taxicab owing to the negligent driving by the defendant was unable to continue in her employment as a domestic servant. She claimed damages for (1) loss of wages and (2) loss of board and lodging. The trial Judge awarded damages for loss of wages but refused damages for loss of board and lodging on the ground that plaintiff's father provided the boarding and lodging and there was no evidence of any promise by the plaintiff to pay her father. On appeal,

Held, it does not matter whether after the accident the plaintiff was taken in by her father. The only consideration is what the plaintiff lost. She lost the value of the board and lodging just as she lost her wages and she is entitled to be compensated for that loss.

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SOTHERDEN *v.* SOTHERDEN, (1940) P. 73 (C.A.).

Divorce—Desertion—Deserted spouse in mental hospital at commencement of desertion and during part of the three years prior to petition—Effect on the period of desertion.

In August, 1931, the wife who suffered from mental infirmity had to go to a hospital whence she was transferred in February, 1932, to a mental hospital where she remained till September, 1936 when she was able to leave the hospital. About July 25, 1932, the husband went off and never saw his wife or offered her a matrimonial home. The wife filed a petition on November 23, 1938, for divorce, on the ground of desertion for three years.

Held, the fact that the wife was in the mental hospital during part of the three years period does not prevent her from alleging that her husband deserted her for the statutory period.

MACKENZIE *v.* MACKENZIE, (1940) P. 81.

Divorce—Desertion—Clause inserted by inadvertence by the clerk in maintenance order by Magistrate against husband that wife not bound to cohabit with husband—Effect on desertion.

In the usual printed form of maintenance order by a Magistrate in favour of the wife by inadvertence, the clause "that the complainant be no longer bound to cohabit with her husband the defendant" was not scored out and the order served on the husband. Subsequently in the wife's petition for divorce alleging desertion,

Held, the order so existing at all material times, the petitioner (the wife) cannot satisfy the requirements of the statute as to the period of desertion when the order subsisted.

CAMPBELL *v.* CAMPBELL, LEWIS AND KEITH, (1940) P. 90.

Divorce—Practice—Discovery—Respondent in her cross-petition alleging husband's association with named woman as conducing to her adultery—Respondent disclosing some documents and asking for further affidavit of documents from the husband—If discovery to be ordered.

In a husband's petition for a dissolution of marriage on the ground of adultery the wife in her cross-petition alleged that the husband had conduced to her adultery by neglecting her and by association with a married woman. She disclosed in her affidavit of documents several documents bearing on the alleged association and applied for a further and better affidavit from her husband.

Held, the wife's allegation is not on the face of it an allegation of adultery, nor is it necessary that it should be so. As the matter is relevant on the question of conduct conducing to adultery the order for discovery should be made.

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JOTTINGS AND CUTTINGS.

CHAIRMAN YENGEYO MUNICIPALITY *v.* AKASA RAMA IYER*

A sketch by the Hon'ble Mr. Justice Wadsworth, broadcast from the Madras Station of All India Radio.

Peon : Silence !

(*A confused babble of conversation and a scraping of chairs.*)

Clerk : S.C. No. 999 of 1938.—Chairman, Yengeyo Municipality *versus* Akasa Ramayyar.

Pltf's. Counsel : May it please your honour. This suit, is preferred to recover a sum of Rs. 19-15-11, due from the defendant by way of profession tax to the municipality. The defendant admits that the amount was demanded, that it is the correct amount according to the prescribed scale and that it has not been paid. I submit that it is for the defendant to establish the rather unusual defence which he has seen fit to plead.

Judge : Yes, Mr. Charjam Ayyar. I agree that the burden is on the defendant. Will you begin, please, Mr. Mekha Row ?

Def. C. : As your honour pleases. I do not think that any lengthy opening is necessary. As my friend has said, we admit the non-payment of the tax demanded. But what we do not admit is the right of the plaintiff to demand that tax. Putting it briefly, my case is that the Yengeyo municipality is not entitled to collect taxes because it has ceased to function as a municipality. The defendant alleges that the municipal council has degenerated into a mere battlefield for the local factions and has become a centre of corruption and intrigue. We are prepared to prove that, far from being the guardian of the welfare of the citizens of the town, the municipality has been engaged in activities which are prejudicial to the well-being of the townsfolk in general and of the defendant as one of them. It is not therefore either in law or equity entitled to require the defendant to contribute to his own detriment. I will now call the defendant. Mr. Akasa Ramayyar !

Crier : Akasa Ramayyar ! Akasa Ramayyar !

(*Oath.*)

Def. C. : You are the defendant in this suit and you admit that the technically correct amount of profession tax was demanded from you and that you refused to pay it.

Akasa Ramayyar : Yes and what is more I am not going to....

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Def. C.:—Please, Mr. Ramayyar, confine yourself to answering the questions. You say in effect that there is no longer any lawful municipality entitled to levy taxes. Will you tell the Court why you have come to this conclusion ?

A. R.: Well, I take it that the function of a municipality is to provide for the health, amenities and education of the townsfolk. This municipality does nothing but encourage dirt, disease and disputes.

(*Uproar. Shouts of* "*Silence.*" *Uproar gradually subsides.*)

Judge: Unless silence is observed, I shall have to clear the Court. Go on, Mr. Mekha Row.

Def. C.: What do you mean by saying that the municipality encourages dirt? Please illustrate your accusation.

A. R.: They let the drains get blocked up till they are nothing but stinking cess-pools, they don't clean or repair the streets, they don't collect any taxes from the councillors or their relatives and those taxes they do collect are embezzled or frittered away. What I mean is that by their corruption and indifference, the staff is encouraged to neglect the sanitation of the town and so to cause filth and disease.

Def. C.: So much for dirt and disease; but what about disputes? How can you say that the municipality encourages factions ?

A. R.: I mean that the whole running of the municipality is in the hands of the factions and it helps them to grow. The parties fake the voters' lists and corrupt the electors. They intrigue to get their partisans into municipal offices and when the council actually meets, its proceedings consist of nothing but rows, points of order, irrelevant resolutions and walkings-out by way of protest. That is not local self-government, it is local anarchy.

Def. C.: I see; and your point is that an agency for promoting local anarchy is..............

A. R.: Is not entitled by law or common sense to require me to pay for its activities.

Def. C.: Thank you, Mr. Ramayyar. That is all I have to ask you.

Plff's. C.: Mr. Ramayyar, I think you were an unsuccessful candidate at the last municipal election ?

A. R.: I was, I am ashamed to say, and I am very glad that I didn't get in.

Plff's. C.: I put it to you that you are disgruntled because you have lost the opportunity to take part in those activities for which you blame the present council.

A. R.: Nothing of the kind. I wouldn't have anything to do with such a crowd. They aren't town councillors—they are town scoundrels!

(*Uproar. Shouts of "Silence."*)

Judge: Mr. Ramayyar, You must not let your enthusiasm for the purity of the local administration lead you into verbal excesses.

A. R.: I'm sorry, Your honour, but I feel very strongly on these matters.

Judge: Quite! Proceed, Mr. Charjam Ayyar.

Plff's. C.: Mr. Ramayyar, you have a cousin who deals in kerosine oil?

A. R.: Well, what if I have?

Plff's. C.: I suggest that he tendered unsuccessfuly for the municipal lighting contract?

A. R.: How do I know? I don't run my cousin's business.

Plff's. C.: Of course you don't know. But you do know that you have a nephew called Velaiyillathavan, who is now unemployed?

A. R.: Yes, but..............

Plff's. C.: One moment, Mr. Ramayyar. I suggest to you that he applied for a post as attender in the municipal office and that his application was rejected?

A. R.: Nothing of the kind. He is staying at home because he is reading for the I.C.S.

Plff's. C.: Really! And what are his qualifications for that distinguished service?

A. R.: He has passed one part of the intermediate exam. and he knows typewriting.

Plff's. C.: Excellent! He is sure to be made a Collector in a year or two. I suggest to you that your real reason for not paying this tax is that you hadn't got the ready cash.

A. R.: That isn't true. I'm not a penniless waster like most of your clients.

Plff's. C.: Well, Mr. Ramayyar, since you are determined to be impertinent, I don't think I need ask you any more questions.

Def. C.: I call Mr. Newspaperwalla.

Clerk: Please repeat after me.

(*Clerk and witness both gabble the oath together.*)

Def. C.: The Newspaperwalla, what are you?

N.: I am the editor of the Yengeyo Gazette.

Def. C.: In that capacity, do you attend the meetings of the municipal council?

N.: Yes—when I can't get anyone else to do it for me.

Def. C.: Did you attend the meeting of 6th January?

N.: Yes I did, for my sins!

Def. C.: What business did the council transact at that meeting?

N.: None at all. As soon as the meeting began, one member rose on a point of order. A wild altercation followed. There were scenes of disorder lasting for two hours. Two members retired with bleeding noses and the proceedings terminated without any resolution being moved or passed.

Def. C.: I think you attended the meeting held on 8th February. Can you tell us what business was done on that occasion?

N.: The proceedings began with a resolution calling attention to the ill-treatment of dhobies' donkeys by Italian volunteers attached to General Franco's army. The council spent three hours discussing whether the resolution should be confined to dhobies' donkeys or should cover donkeys generally. The majority favoured the view that the council had a duty towards all donkeys and the resolution was amended accordingly and passed. There was no time for the rest of the agenda which was adjourned to the next meeting.

Def. C.: I understand that you also attended the next meeting held on 14th March?

N.: Unfortunately I did.

Def. C.: Why was it unfortunate?

N.: Because it was a waste of time. The meeting started an hour late. It began by the Chairman asking for sanction for Rs. 200/ for repairing Kachikkaran Lane—where his own house is. A member of the opposition protested against this expenditure when nothing had been done to supply gramophones to prisoners in the Central Jail. When the Chairman ruled that this protest was irrelevant the opposition walked out in a body and the meeting was adjourned for want of a quorum.

Def. C.: At these three meetings which you attended, would you say that the municipal council performed any of the functions for which it was elected?

N.: Emphatically not.

Def. C.: Thank you, Mr. Newspaperwalla.

Pltff's. C.: Am I right in supposing, Mr. Newspaperwalla, that you are not only the editor of your widely-read journal, but also the sub-editor, the reporter, the printer and the advertisement manager?

N.: Well I must admit that I am rather a Jack-of-all-trades.

Pltff's. C.: You used to receive advertisements from the Yengeyo municipality?

N.: Yes.

Plff's. C.: Am I right in saying that they have now been taken away from you and given to the Yengeyo Morning Post?

N.: I don't know. I never read that rag. We aren't getting the advertisements now; that is all I know.

Plff's. C.: How annoying for you! Now Mr. Neswpaperwalla, I think you have a brother-in-law who is a doctor.

N.: I have.

Plff's. C.: Is it true that he was dismissed from service under the municipality because he was demanding money from patients at the dispensary?

N.: That was the false story they made up. The real reason was that he refused to get up in the middle of the night to poultice a boil on the seat of the Chairman's nephew.

Plff's. C.: Well, that is your version. Now I think you were formerly working as a journalist in Bombay.

N.: Yes.

Plff's. C.: Isn't it true that you left Bombay to avoid being prosecuted for bribery at the municipal elections.

N.: It's a lie! Your honour, I protest at these outrageous accusations! I demand..............

Judge: I'm sorry, Mr. Newspaperwalla, but counsel has to ask these unpleasant questions if he is instructed to do so. Any further questions, Mr. Charjam Ayyar?

Plff's. C.: No, your honour, I don't think I need outrage the witness by any further revelations of his past.

Def. C.: I close my case.

Plff's. C.: Your honour, I scarcely think that any formal opening of the plaintiff's case is necessary. The defendant admits that the tax is legally due, but denies that the plaintiff council is qualified to collect it. I claim that the allegations against my clients are false and malicious and that even if true they provide no defence to the plaintiff's suit. I assert that the Yengeyo municipality, though it may not be perfect, is honestly endeavouring to discharge its legal functions for the benefit of the people of this town. I will call Mr. Zubberdusti Mudaliar, Chairman of the Municipality.

Clerk.: Please repeat after me...

(*Repeats oath.*)

Plff's. C.: Mr. Zubberdusti Mudaliar, you have been chairman for how long?

Z. M.: For the last three years.

Plff's. C.: While you have been chairman, how many resolutions has the council passed?

Z. M.: I find that the total figure is 597.

Plff's. C.: How many miles of street have been repaired?

Z. M.: 15 miles 7½ furlongs.

Plff's. C.: What amount has been collected by way of taxes?

Z. M.: Just over 1¼ lakhs.

Plff's. C: Is it true that the municipality has been encouraging disease and dirt, leaving taxes uncollected and fomenting faction and disorder?

Z. M.: It is a downright lie and the man who says it deserves to be....................

Plff's. C.: I think we had better leave his honour to say what our opponent deserves. I have no further questions.

Def. C.: Mr. Zubberdusti Mudaliar, you say that you have collected 1¼ lakhs of taxes. Can you tell me how much you have failed to collect?

Z. M.: I can't say off-hand. There are always a lot of troublesome people like the defendant who won't pay till they are forced.

Def. C.: Let us leave the defendant's arrears for a moment. He makes no secret about them. But you, Mr. Zubberdusti, can you tell me when you last paid your own property tax?

Z. M.: I pay my taxes as soon as the demand comes.

Def. C.: Precisely—and in your capacity as Chairman you take good care that no demand ever reaches you.

Z. M.: I protest! It is a scandal! I................

Def. C.: Please don't work yourself into a state of righteous indignation. Let me put it this way. Is it not true that during the whole of your term of office, no single demand for any tax of any kind has ever reached you?

Z. M.: How can I remember? All I know is that I pay my taxes whenever they are demanded, like any other good citizen.

Def. C.: Only, unlike most good citizens, by some strange accident the demands never reach you! Well, we'll leave it at that. I put it to you that no demands for taxes are ever served on any of the members of your party in the council?

Z. M.: It's a lie!

Def. C.: So you say. Now I will turn to another matter. How often during your term of office has it been necessary for the police to intervene at meetings of the council?

Z. M.: Never.

(*Shouts of protest. Cries of "Silence."*)

Def. C.: You swear that the police have never intervened?

Z. M.: No, I don't say that. I say that it was never necessary for them to intervene. If an officious sub-inspector chooses to butt in at a council meeting, I can't stop him.

Def. C.: I put it to you that you yourself have twice sent for the police to put a stop to free fights amongst the members?

Z. M.: I may have. I don't remember.

Def. C.: I may take it that scenes of disorder are so frequent that they make no permanent impression on your memory. You say that you have repaired over 15 miles of street. That includes the Kachikkaran Lane in which you live?

Z. M.: Yes. That is one of the many streets repaired.

Def. C.: You made a very good job of the Kachikkaran Lane?

Z. M.: Yes, of course.

Def. C.: I suggest that when you take up the repairs of streets in the poorer quarters of the town, the money all goes into the pockets of contractors, maistries and councillors and that the streets are no better than they were before the repairs started.

Z. M.: If you want to give evidence, why don't you come into the box? It isn't true.

Def. C.: I put it to you that the death rate in the town has steadily risen since you became Chairman?

Z. M.: I can't help it if God sends epidemics.

Def. C.: But can you blame God for letting the drains get stopped up and letting sewage into the water supply?

Z. M.: I deny that the drains are stopped up. It's a libel. You've no right to.........

Def. C.: That will do Mr. Zubberdusti. I have no more questions.

Plff's. C.: I call Mr. Bakshi Sahib.

(*Clerk administers oath to Bakshi Sahib.*)

Plff's. C.: Mr. Bakshi Sahib, you are the overseer of the Yengeyo municipality and your duty is to supervise the sanitary and engineering staff?

B. S.: Yes, Sir.

Plff's. C.: Is it true that the drains of the town have got all blocked up, so that they are no better than cess-pools?

B. S.: No, Sir.

Plff's. C.: Is it true that money allotted for repairs of streets in the poorer quarters all goes into the pockets of contractors, maistries and councillors?

C

B. S.: No, Sir. It is properly spent on the works.

Plff's. C.: Thank you, Mr. Bakshi Sahib, That is all I have to ask you.

Def. C.: Mr. Bakshi Sahib, when you say that the money doesn't all go into the pockets of contractors, maistries and councillors, do you mean to suggest that a lot of it goes into your own pocket?

B. S.: No I don't. I am a poor man, but I am honest.

Def. C.: You are generally known as Baksheesh Sahib, aren't you?

B. S.: People call me all kind of things, because I am good-natured.

Def. C.: I suggest that you are called Baksheesh Sahib, because no one can get anything done in the town without giving you baksheesh.

B. S.: I tell you, I am an honest man.

Def. C.: And also poor, I think you said. You built a new house for yourself last year, didn't you?

B. S.: No, it was my wife who got it built.

Def. C.: Did'nt she get it built by Cheetum Sahib, a municipal contractor?

B. S.: He does sometimes do contract work for the municipality, but I don't see how that matters.

Def. C.: Of course you don't. The house cost Rs. 7,000 didn't it?

B. S.: It may have. I don't know. It is-n't my house.

Def. C.: What is your pay?

B. S.: Rs. 47-8-0.

Def. C.: Is your wife a rich woman?

B. S.: She raised a loan—she borrowed on pledge of her jewels.

Def. C.: I think she borrowed Rs. 2,000 from Panakkaran Chetti and that he is the man who recently got the municipal lighting contract?

B. S.: May be. It's no business of mine.

Def. C.: Didn't you buy 20 acres of wet land in your native village about 18 months ago?

B. S.: No, it was my wife who bought it.

Def. C.: Ah! The rich wife again! I suggest that the money came from your pickings out of the municipal road-mending contracts?

B. S.: It's a lie.

Def. C.: Well, shall we say that one of us two is a liar and leave it to his honour to decide which? Do you know Munian?

B. S.: You mean the man who lives behind the market? Yes I know him.

Def. C.: His three year-old daughter was drowned last January, wasn't she?

B. S.: I heard so.

Def. C: Is it not true that she was drowned because she fell into a choked-up drain and was sucked down into the mire?

B. S.: How do I know? I wasn't there. I'm not a nurse-maid to look after all the children.

Def. C: No and I hope you are not a murderer to kill all the children with your filthy drains. That will be all, Mr. Bakshi Sahib.

Pltff's. C: May it please your honour, I do not propose to weary you with any lengthy address. For I submit that the defendant has entirely failed to show any reason why he should not pay the taxes lawfully demanded of him. My learned friend has talked of the mire in the municipal drains, but I venture to say that there has been more mud slung in this Court to-day by my learned friend, than there is in all the drains of this municipality. I feel that I should be failing in my duty to my clients and to the citizens of this town, if I did not protest with all the emphasis of which I am capable, against these scurrilous aspersions on the character of our leading townsmen and against these unjustifiable onslaughts upon the good name of this town, of which I am proud to be a native. I say in all seriousness that my learned friend's cross-examination has been nothing less than a continuous series of defamatory insinuations, which I challenge him to repeat outside the four walls of this Court. If he has the temerity to accept this challenge, my learned friend will soon find himself appearing in Court in a different and less profitable capacity. To my mind it is outrageous that public men, sacrificing their time and talents for the common good, should be rewarded by such scurrility.

(*Cheers and groans and cries of "silence."*)

But, your honour, suppose I assume, merely for the sake of argument, that there is some shadowy substance in the defendant's unfounded allegations against the conduct of the municipal administration. What is the effect of these allegations on this case? I submit that they are absolutely and entirely irrelevant. The law has invested this municipality with powers to impose and collect taxes. My contention is that so long as the council and its officers follow the procedure laid down in the Act, the tax-payers cannot resist the demand by alleging that the money is being ill-spent or that the local administration is inefficient. I therefore ask your honour with some confidence to give a decree to the plaintiff for the amount of the claim with costs.

Def. C.: My learned friend's indignation, your honour, at the aspersions which I have been instructed to make upon his clients and their supporters, leaves me, if I may say so, with great respect to my learned friend, entirely unmoved. It is an old maxim of advocacy, that when you have got a bad case, you should abuse the lawyer on the other side. I have myself a good case so that it is unnecessary for me, even if I had the inclination to do so, to sink to my learned friend's level. I maintain that I have fully proved that the Yengeyo municipality is not a municipality in the eye of the law, any more than it is in the opinion of the public. I have demonstrated that its meetings are riotous and disorderly and that on the rare occasions when peace is maintained, the deliberations of the council are almost entirely devoted to matters unconnected with the welfare of the town. I have proved that instead of collecting taxes according to the law, which apportions the burden impartially to the means of the citizen, the members of this council have been practising an illegal system, whereby they themselves pay nothing and the whole burden of taxation is thrust upon the shoulders of their unfortunate fellow-citizens, whose interests these step-motherly councillors have been charged by law to protect. I submit that the defendant has adduced sufficient evidence to establish that the whole administration of this town is foul with the canker of corruption. And I maintain that it is not the object of the law to allow these architects of maladministration to build up their structure with funds wrung from the pockets of the poor. I ask your honour's pardon, if I have used language more emphatic than is customary in the dignified precincts of this Court. But fortunately it is not often that this Court has to listen to such a tale of degradation as has been unfolded before your honour to-day. I would respectfully remind the Court that my client is fighting, not merely his own battle, but the cause of the poor, the diseased, the downtrodden. I therefore ask your honour to dismiss this suit with costs.

(*Cheers from the back of the Court, gradually subsiding as cries of "silence" are heard.*)

Judge: This case has given rise to much excitement and controversy, but the issues which it raises are really very simple. The first question is whether the plaintiff municipality has conducted itself in such a way as totally to change its character and status so that it can no longer be legally described as a municipality in the strict sense of the term. The second question is whether, assuming the allegations of the defendant to be true, they afford a sufficient reason in law to justify the defendant in his refusal to pay taxes. Now, unfortunately the Act with which we are concerned contains no definition of the word municipality and once more it is the duty of the judiciary to supply the deficiencies of the legislature. However,

I think I shall not be far wrong if I define a municipality as a corporation empowered by law to supply the mental, moral and physical requirements of an urban community and to levy taxes for that purpose. The ease with which I formulate this subtle definition will doubtless make the public share with me the regret that the laws are made by legislators and not (as they obviously ought to be) by the Judges. Now what are the reasonable requirements of the people of a town? To mention only the most important, I would say good water, good roads, good drains and good government. To what extent have these requirements been supplied by the plaintiffs? We are told that the citizens have been given water polluted by sewage, drains which resemble cess-pools and are a death-trap to little children, roads which are repaired only if they lead to the houses of the favoured few, and a local administration which is a compound of corruption, disorder and irrelevance. Can a council, which devotes hours of public time to discussing the treatment of donkeys in Spain have any claim to be regarded as a *municipal* council, whatever may be its merits as an international association for the promotion of veterinary science? Is an organisation whose meetings are fraught with disorder, faction and recriminations, one which promotes the mental and moral welfare of the citizens committed to its charge? Can a corporation which collects heavy taxes from the poor and the fatherless, but lets its own rich members go scot-free, which repairs roads for its chairman and his partisans, but leaves its slums roadless, which uses funds raised from the meagre earnings of labourers, for the enrichment of its contractors and underlings—can such a corporation be legally described as a municipality? I have no hesitation in saying that it cannot.

Now the powers conferred by the legislature upon municipal councils are extensive, but they are not unlimited. Granted that our legislators frequently enact measures which reveal singularly little foresight and no skill in draftsmanship, they are not so utterly lacking in common sense as to impose upon our town the despotic sway of a Hitler or a Mussolini. In legislating for our municipalities, they have prescribed certain powers and set forth, not perhaps in the happiest language, but with sufficient clarity, the objects for which those powers shall be used. Those objects are very wide, but they do not, unless I am grievously in error, comprehend the nurture of General Franco's asses or the maintenance of open cess-pools in the public streets. A municipal council is empowered to collect taxes from citizens according to their means, but it is not empowered to throw all the burden of taxation upon its political opponents. It is authorized to practise the arts of democratic government, not the arbitrary methods of a despot or a pirate. I do not for a moment say that a citizen would be justified in *refusing to pay* his taxes because

of mere allegations of inefficiency. But would he not be justified in resisting the demand for taxes, when the municipality has ceased to discharge those functions for which it was created and has given itself up to activities which are pernicious and anti-social? I consider that he is so justified. What is more, I say that the citizen who acquiesces in local misgovernment, is an accessory of disorder, failing in his duty to the state and to his fellow-citizens. It may be that the defendant and his supporters are inspired by motives unworthy of the cause which they have championed. But as an even greater judge than myself once remarked, " God alone knoweth the mind of man." This Court, not being endowed with divine omniscience, can only look at men's actions and say whether they be good or bad. Looking at the acts of the defendant and not seeking to delve into his motives, I find myself full of approbation for the courageous stand which he has taken against the twin evils of corruption and misgovernment. It is therefore with a firm conviction of the correctness of my decision, that I dismiss the plaintiff's suit; and I further direct that the defendant's costs be paid by the Chairman from his personal estate and not from the municipal funds. I would add that if ever this municipality is reconstituted as a true organ of local self-government, its first act should be to dismiss the overseer, Bakshi Sahib.

(*Cheers and cries of* " *Silence.*")

Some Quaint Obiter Dicta.—An old judge quoted by the late Augustine Birrell, who by the title of his two early volumes of essays gave a new and delightful significance to the expression " *Obiter Dicta*" explained that "an *obiter dictum* in the language of the law, is a gratuitous opinion, an individual impertinence which, whether it be wise or foolish, right or wrong, bindeth none, not even the lips that utter it." No bad definition, it will be agreed, but doubtless the old judge who coined it was thinking merely of expressions of opinion thrown out in the course of the legal argument, and not strictly germane to the precise question which called for decision. *Obiter dicta* cannot, however, at all events for the present purpose, be limited to views thrown out from the bench as to the law involved in the particular case; they may roam over, and in fact do cover, an extensive area, indeed the whole range of thought. Thus we cannot forget that *dictum* addressed to a member of the bar whose submissions were interrupted by the judge in the words: "Mr. A., I never listen with any pleasure to the arguments of counsel whose legs are encased in light grey trousers." Those were the days when members of the bar were expected to be punctilious in the observance of the strict sartorial rules, days which have gone and given place to a laxity which would have astounded and pained our grandfathers and fathers. Again,

in a very different sphere, we recall the cutting observation of Lord Justice Knight Bruce, named in his day as the prince of judicial wits, who at the conclusion of an administration suit quietly remarked that "the estate will be distributed in the usual way among the parties' solicitors," thus following what has been called the true order of procedure in legal matters—costs first, then practice, and finally merits !—*L.T.*, *1940*, *p. 43*.

Bowen's Witty Obiters.—What may with justice be included among judicial *obiter dicta* or rather *obiter scripta* was the letter sent down from the bench by Bowen to Buckley, Q.C., whose name was inseparably linked to his classic treatise on company law, a subject on which he was a past master. The story goes that Buckley was appearing before Bowen, and in the course of the day Bowen sent down a note to Buckley asking him to dinner. Buckley replied thanking the judge for the invitation but expressing regret for his inability to accept it inasmuch as he was hourly expecting an addition to his family. To this came a second note from the bench couched in these terms: "I congratulate you on the projected issue of a new memorandum of association" ! No one but Bowen could have utilised the occasion for so appropriate a reply; but he was indeed one in a thousand, a master of language and a cheery wit. Again, no one will forget his suggested emendation of the address by the judges to her late Majesty, Queen Victoria, on the occasion of her jubilee. The draft contained the sentence, "Conscious as we are of our imperfections." To this Bowen demurred and suggested that it might, however, be thus amended: "Conscious as we are of each other's imperfections." A great classical scholar and a master of his native tongue, he doubtless looked with little favour on the judicial utterances of his brother judge, A. L. Smith, a great lawyer and great judge, no doubt, but Bowen put his finger on the lack of distinction in that colleague's pronouncements when he said, "There is a distressing nudity about A.L.'s judgments." A.L. was certainly not a master of clear expression and did not in this sphere resemble John Bright, the clarity of whose speeches Kinglake accounted for by the fact that he never had enjoyed the disadvantage of a classical education.—*L.T.*, *1940*, *p. 44*.

Lord Darling's Obiter.—To write of *obiter dicta* and to leave out the late Lord Darling as a prolific producer of witty touches which contributed much to the delight of visitors to his court as well as of all save perhaps those who may have been the victims of his wit, would very much resemble presenting the play of Hamlet and leaving out the title role. His jokes were many, possibly too copious, but the great majority of them were of excellent calibre sparkling like gems.

Thus, we have his very witty comment on the ancient maxim, "*Ne sutor ultra crepidam*," namely, that it has no application to those exercising judicial functions; it applies only to sutors. With a sense of sadness we also recall his enquiry of the late lamented J. B. Matthews whose exuberance and rapidity of diction were probably without parallel. It seems that the judge noticed J. B. coming into the court and taking his seat in the front row, whereupon, in his most dulcet tones, he said, "Oh, Mr. Matthews, can you, without undue prolixity, tell me, are you in the next case?" In one of his early incursions into the field of political science he remarked, with his accustomed wit, that "what recommends party government is that it enables us to slander our rulers without sedition, and overthrow them without treason."—*L.T.*, *1940*, *p. 44*.

At the Bar.—We usually and properly regard an *obiter dictum* as an utterance from the bench, but occasionally we find one coming from some member of the bar in addressing the judge, though in these circumstances it lacks even the slight authority the *dicta* of a judge may carry. Of witty utterances in this genre from the bar we may certainly include the definition of an affidavit given by a distinguished Chancery silk, namely, that "it is a document skilfully drawn by counsel, to the truth of which the deponent more or less willingly swears." Even in the reports, which are usually accounted very sedate productions offering no scope for frivolity, we occasionally light upon a bright patch which may well be designated an *obiter scriptum*, such as that footnote appended by Macqueen to his report of *Reid* v. *Bartonshill Coal Company* and *McGuire* v. *The same company*, namely this, "Reid and MacGuire were victims of the same accident, which, though melancholy, has settled the law." In the same line of country we find Sir Gregory Lewin annotating his reports in this fashion: "Possession in Scotland evidence of stealing in England," and "A party is bound to retreat by a back door to avoid a conflict."—*L.T.*, *1940*, *p. 44*.

House of Lords Appeals.—Despite the partial embargo which in recent years has been placed upon the right of a litigant to go from the Court of Appeal to the House of Lords, there seems to be very little, if any, diminution in the number of cases which find their way to the Lords to hear the last word on the subject of the litigation. In this we have another illustration of that hope which, the poet assures us, springs eternal in the human breast. The sittings of the House in its judicial capacity were resumed recently with a list of twenty-two cases, four coming from Scotland. These sittings were particularly interesting in that the Lord Chancellor, Viscount Caldecote,

presided for the first time at the hearing of the appeals. For some time he has been presiding in the Judicial Committee of the Privy Council, but not until this term did he make what may be termed his judicial debut in the Lords. In accordance with precedent, he wore his robes and full-bottomed wig, whereas it is not the practice of the Lords of Appeal in Ordinary to appear otherwise that in civilian dress. —*S.J.*, *1940*, *p. 85*.

Legal Representation before Hardship Tribunals.—A recent writer to *The Times*, speaking from his experience as a chairman of an exemption committee during the last war, provides an interesting commentary on the remarks made by Mr. Randle F. W. Holme, President of the Law Society, at the recent special general meeting of that body, reported in our last issue. The writer heard between 2,000 and 3,000 applications for exemption, and states that he can well remember that the labours of the committee were lightened and shortened when the applicant had legal assistance. His case was put before the committee better than, in most instances, he could put it himself. An application to a hardship committee, the same writer urges, is in the majority of cases an important event in a man's life. He has probably never appeared before any tribunal, and it is difficult for him to put his case himself. Often he is tongue-tied, or very apt to introduce matters which he thinks helpful to his application but which are really irrelevant. The writer often found on careful examination of the applicants appearing in person that the most meritorious cases were those where the applicants themselves were least able to state them. That all took up time, which the help of a lawyer would have avoided. "Further," the letter continues, "I do not see the object of preventing an applicant having a lawyer to represent him should he wish it. The expense does not fall on the State. If the applicant is to have any help at all, I cannot see that the trade union official or a relative or a personal friend is better qualified than the applicant's own solicitor or counsel." It is urged, moreover, that the difficulty of deciding these hardship cases increases when the older men are called up, particularly those of between thirty and forty years of age who are married, with children, and have businesses of their own—all factors that a hardship tribunal has to take into account when listening to an application. The writer concludes by expressing the hope that it is not too late for para. 18 of the National Service (Armed Forces) Miscellaneous Regulations, 1939 (which provides that no applicant to a hardship tribunal may be represented by counsel or solicitor), to be reconsidered.—*S.J.*, *1940*, *p. 85*.

Relating to Children.—A notably superfluous passage in an affidavit read recently in the Chancery Division caused Mr. Justice Farwell to remark; "It seems a little unnecessary for a lady to say that she

was present at the birth of her own infant. One assumes that usually. It is difficult to see how she could have been anywhere else." Oddly enough, this point is not free from authority, for no one has put the principle underlying the matter more eloquently than O'Brien, J., in the concluding passage of his judgment in *Walker* v. *Great Northern Railway Co. of Ireland*, 28 L.R. Ir. 69, at p. 83: "In law, in reason, in the common language of mankind, in the dispensations of nature, in the bond of physical union and the instinct of duty and solicitude on which the continuance of the world depends, a woman is the common carrier of her unborn child, and not a railway company." In this connection one is reminded of the lady who, when asked in a court of law how many children she had had, replied: "Four, to the best of my knowledge, information and belief." Then there was the case of the man who was being tediously cross-examined before Mr. Justice Darling. He had been asked how many children he had had, and replied two. Later on he was asked the same question again, and the judge intervened: "He told you he had two children a few moments ago. There are hardly likely to have been any fresh arrivals since."—*S.J., 1940, p. 93.*

Particularity.—Pleadings and affidavits now and then produce oddities of assertion. The Court of Appeal was once considerably amused by a paragraph in a defence signed by Edward Buller: "The defendant denies that he is the father of the said twins or of either of them." He explained that that particular gem of precision was due to an accident in his pupil-room, but the style of the master hand was clearly recognisable. The late Sir Arthur Underhill, in his memoirs, recalled how once in the Court of Vice-Chancellor Bacon a particularly solemn silk read out an affidavit which began: "I am eighty-two years of age and have had eighteen children and no more." At that point the judge interrupted the reading, exclaiming: "Give him time, Mr. Horton-Smith, give him time."—*S.J., 1940, p. 93.*

Judges and the Poetic Muse.—Although we instinctively regard members of the Bench as concerned almost exclusively with the consideration and solution of the many legal conundrums which are submitted to them, rather than with such an apparently antithetical matter as courtship of the poetic muse, it is nevertheless interesting to discover that not a few of our judges have dallied with verse, and have given forth some happily inspired lines oftentimes glinting with an exquisite humour. Even Baron Parke, a great master of the common law and so absorbed in it as, according to the legend, to have taken a "beautiful demurrer" to the bedside of a sick friend to cheer him into convalescence, and who, on being asked if he had written any books, answered with becoming gravity that his works

were to be found enshrined in the serried row of volumes for which Messrs. Meeson and Welsby were responsible, could at times unbend and pen some witty lines. When, for example, his old friend Sir David Dundas was appointed Solicitor-General, Parke sent his congratulations, and with these an invitation to dinner for a certain evening. Sir David replied thanking Parke for his kind letter, but expressing regret that he would be unable to accept the invitation seeing that he had been already invited by no fewer than seven peers for the same evening. This evoked from Parke the neat rejoinder:

"Seven thriving cities fight for Homer dead
Through which the living Homer begged his bread,
Seven noble lords ask Davie to break bread
Who wouldn't care a d—were Davie dead"!

To those of us who know Parke only in his judgments packed with learning such as few of his colleagues could boast, it comes with something of a surprise, but a pleasant one, that he could throw off piquant lines such as those indited to his friend Dundas.—*L.T., 1940, p. 102.*

BOOK REVIEWS.

MUHAMMADAN LAW by Faiz Badruddin Tyabji, M.A., Barrister-at-Law. Published by N. M. Tripathi & Co., Bombay (III edition), (1940). 1056 pages. Price Rs. 20.

Mr. Tyabji's book has for long been regarded as an exhaustive and standard treatise on the law applicable to Muslims in India. Its scheme is to treat the whole subject in the form of the sections of an enactment containing the statements of law as established by the texts and judicial decisions succinctly, and to give their exposition elaborately under each section. The task of the learned author has been rendered particularly difficult in view of the existence of several superior Courts of co-ordinate status in the country and the conflict of decisions consequent thereon. In the circumstances therefore the citation of cases had, as the author has pointed out, to be selective rather than exhaustive.

The legislature has during the last decade passed a number of important enactments affecting the Muhammadan Law, modifying the pre-existing law. The Bengal Wakf Act of 1934, the Shariat Act of 1937, the Cutchi Memons Act of 1938, and the Dissolution of Muslim Marriages Act of 1939 are a few of such enactments. Almost all these have been noticed by the learned author and their principles incorporated in the statement of the law relating to the concerned topics. The full text of seven such enactments has been given as an appendix, thereby adding to the utility of the work. It should certainly have conduced still further to the exhaustive character of

the treatise if the provisions of the Bengal Wakf Act of 1934 and those of Acts like the Child Marriage Restraint Act had also been referred to.

On some points the information given could have been made fuller. On p. 62 it is mentioned that till the passing of the Shariat Act in 1937, several families of the Mapillas of North Malabar were subject to the Marumakkatayam customs, though they were all Muslims. The statement overlooks the fact that ever since the passing of the Mapilla Succession Act, 1918, the Mapillas are governed in matters of succession by the Muslim law and similarly from 1928 when the Mapilla Wills Act came into force it was the Muhammadan Law of Wills that applied to that community. On p. 112 it has been stated that the husband has a right under Muhammadan Law to chastise his wife moderately, though the right will have to be exercised with circumspection. The decision in In re *Subbiah Goundan*, 165 I.C. 330=A.I.R. 1936 Mad. 788, laying down that no such right is now-a-days recognised by law and that wife-beating is not *eo nomine* one of the exceptions in the Chapter mentioning the General Exceptions in the Penal Code, seems to have escaped notice.

The author states on p. 99 that "the salutary rule laid down in *Hassan Kutti's Case* (52 Mad. 39), will, it is hoped, not be questioned when similar cases arise again," the rule being that the marriage of an adult virgin governed by the Shafi Law, contracted by her father without her consent is not valid. The author's hope has to some extent been realised by the same view being taken by the Bombay High Court in 41 Bom.L.R. 1020=A.I.R. 1939 Bom. 489, a decision which does not seem to have been noticed in the book.

The exposition of law is throughout lucid and illuminating. Copious references have been made to the original textual authorities and to the way in which many of the points have been dealt with in other systems of law. The book should prove greatly useful to lawyers and students alike.

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